

December 18, 2006

*Via Electronic Filing*

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 Twelfth Street, S.W.  
Washington, DC 20554

Re: WT Docket Nos. 05-211, 06-150 and 06-169  
*Ex Parte*

Dear Ms. Dortch:

Access Spectrum, LLC (“Access Spectrum”) and Pegasus Communications Corporation (“Pegasus”) have proposed the Broadband Optimization Plan (“BOP”) and the Commercial 700 MHz Plan, which outline a set of changes to the Commission’s rules in order to optimize the Upper 700 MHz for both public safety and commercial operations. Access Spectrum and Pegasus have explained in several filings that these required rule changes for both public safety and commercial spectrum can be adopted promptly, without causing delay of the auction. Verizon Wireless (“Verizon”), in its December 13, 2006 *ex parte* filing in the above-referenced dockets, reiterated its opposition to any changes to the 700 MHz rules, other than to extend the license term.<sup>1</sup>

To date, Verizon has not publicly specified its reason for opposition, other than noting its concern that any changes “could undermine the ability of the Commission to meet its obligation to auction the spectrum in accordance with timelines established by law.”<sup>2</sup> Access Spectrum, Pegasus, and others that support changes to the Upper 700 MHz rules share the goal of a timely auction and the expeditious adoption of rules governing both public safety and commercial allocations. The changes proposed by Access Spectrum and Pegasus are clearly within the authority of the FCC,<sup>3</sup> are consistent with a prompt auction of 700 MHz licenses, will increase the protections for public safety operations without reducing the effective use of commercial spectrum in the band, and will increase the utility of both public safety and commercial spectrum in the band, as explained below.

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<sup>1</sup> Letter from Charla M. Rath, Verizon Wireless, to Marlene H. Dortch, Federal Communications Commission, WT Docket Nos. 05-211, 06-150 and 06-169, at 1 (Dec. 13, 2006) (“Verizon Ex Parte”).

<sup>2</sup> *Id.*

<sup>3</sup> See Letter from Ruth Milkman, Lawler, Metzger, Milkman & Keeney, LLC, on behalf of Access Spectrum, LLC and Kathleen Wallman, Wallman Consulting, LLC, on behalf of Pegasus Communications Corporation, to Marlene H. Dortch, Federal Communications Commission, WT Docket Nos. 96-86, 06-150 and 06-169 (Dec. 12, 2006).

It is noted that Verizon has not elaborated in any detail why it believes the Commission would be unable to implement these beneficial options for the 700 MHz band in time to auction the spectrum in accordance with the statutory requirements. The comment periods for all applicable proceedings<sup>4</sup> have been completed, and all of the preconditions outlined by the public safety community for its support of the BOP have now been met, as described in the Report of the 700 MHz Technical Working Group (“TWG”),<sup>5</sup> which was recently endorsed by NPSTC.<sup>6</sup> Indeed, the BOP, which proposes an integrated package of changes to the rules for both the public safety allocation and the A and B Blocks, is supported by National Public Safety Telecommunications Council (“NPSTC”), Association of Public-Safety Communications Officials – International (“APCO”), International Association of Fire Chiefs (“IAFC”), International Association of Chiefs of Police (“IACP”), Motorola, Intel, Northrop Grumman and others. Multiple parties have made multiple filings in the public record in support of enhancing the viability of the 700 MHz band. None of them have requested a delay in the 700 MHz auction nor suggested that such a delay is necessary to accommodate these critical public interest objectives. In fact, most of them explicitly say that there should be no delay in the 700 MHz auction.<sup>7</sup> Further, as noted above, the record contains no substantive opposition to the Commercial 700 MHz Plan; the only concerns raised have been procedural in nature, regarding the possibility of delay. Such concerns would be addressed by prompt Commission action.

In its December 13th *ex parte*, Verizon also repeats concerns regarding any changes to the rules for the Upper 700 MHz A and B Blocks “that would increase the potential for interference to public safety and/or reduce effective use of commercial spectrum,” and suggests that the Commission would need “assurances that the public safety spectrum will be used in a manner that is compatible with commercial systems.”<sup>8</sup> In our reply comments, we agreed that

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<sup>4</sup> See *The Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Communications Requirements Through the Year 2010*, Eighth Notice of Proposed Rulemaking, 21 FCC Rcd 3668 (2006); *Service Rules for the 698-746, 747-762 and 777-792 MHz Bands*, Notice of Proposed Rulemaking, Fourth Notice of Proposed Rulemaking, and Second Further Notice of Proposed Rulemaking, 21 FCC Rcd 9345 (2006); *Former Nextel Communications, Inc. Upper 700 MHz Guard Band Licenses and Revisions to Part 27 of the Commission’s Rules*, Notice of Proposed Rulemaking, 21 FCC Rcd 10413 (2006).

<sup>5</sup> Report of the 700 MHz Technical Working Group, transmitted via letter from Ruth Milkman, Counsel for Access Spectrum, LLC and Kathleen Wallman, Adviser to Pegasus Communications Corp., WT Docket Nos. 06-169 and 96-86 (Oct. 23, 2006) (“Report of the 700 MHz Technical Working Group”).

<sup>6</sup> Letter from Vincent R. Stile, National Public Safety Telecommunications Council, to Marlene H. Dortch, Federal Communications Commission, WT Docket Nos. 06-169 and 96-86 (Dec. 6, 2006) (filed Dec. 7, 2006).

<sup>7</sup> See, e.g., Reply Comments of Northrop Grumman Information Technology, Inc., WT Docket Nos. 06-169 and 96-86, at 2 (Oct. 23, 2006) (by adopting the Access Spectrum/Pegasus proposal, the FCC can ensure timely auction of the commercial 700 MHz spectrum).

<sup>8</sup> Verizon Ex Parte at 1. In addition, Verizon incorrectly asserts that the Guard Bands would be eliminated, *id.*, a misunderstanding that we corrected in our reply comments. Reply

rule changes should not permit increased interference to public safety operations or decrease the usefulness of commercial spectrum.<sup>9</sup> In fact, as explained below, the Access Spectrum-Pegasus proposals maximize the broadband opportunities in the band, enhance interference protections for public safety operations, and improve the conditions for potential commercial operators.

The BOP consolidates public safety's narrowband allocation, thereby ensuring that the sensitive receivers of future public safety radios can more easily resist interference from commercial operators; this has the effect of enabling commercial operators to make more effective use of the band without risking undue interference. Further, the BOP maintains adequate guard bands separating public safety narrowband channels from adjacent commercial spectrum,<sup>10</sup> and places the guard bands under public safety control, thus improving public safety's protection from interference. Finally, while public safety has a guard band at the top edge of its narrowband allocation equivalent to the guard band in the current rules, at the bottom edge its narrowband allocation is a full 6.5 MHz away from commercial broadband operations (the re-configured A Block). Thus, not only is protection of public safety's narrowband operations superior under the BOP, but also the conditions for adjacent commercial operations are demonstrably improved.

The interface between public safety broadband and commercial broadband systems is not addressed by current rules because broadband is not currently permitted in public safety spectrum. As the Commission has noted, the rules must be changed in order to enable public safety to deploy broadband – and the goal of enabling public safety broadband is shared by all parties. We expect the TWG to recommend rules in January 2007 that will ensure the necessary protection for public safety operations, while enabling the entire commercial allocation (including the re-configured A Block) to be used for commercial broadband operations. Many commercial and public safety entities are participating in the TWG to ensure that the usefulness of the commercial spectrum is maximized while protecting public safety operations. As we noted in our reply comments,<sup>11</sup> we would welcome the opportunity to work with Verizon on these issues and provide assurances that the commercial spectrum, some of which we hold, will not be reduced in its usefulness.

The benefits of the proposed changes to the Upper 700 MHz band warrant their adoption. As we have demonstrated conclusively in our various filings,<sup>12</sup> the existing rules do not

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Comments of Access Spectrum, LLC and Pegasus Communications Corporation, WT Docket Nos. 06-169 and 96-86, at 7 (Nov. 13, 2006) (“Access Spectrum/Pegasus Reply Comments”).

<sup>9</sup> Access Spectrum/Pegasus Reply Comments at 7.

<sup>10</sup> Reply Comments of the National Public Safety Telecommunications Council, WT Docket Nos. 06-169 and 96-86, at 4 (Nov. 13, 2006) (“NPSTC Reply Comments”).

<sup>11</sup> Access Spectrum/Pegasus Reply Comments at 16.

<sup>12</sup> See generally, Comments of Access Spectrum, LLC, Columbia Capital III, LLC, Intel Corporation, and Pegasus Communications Corporation, WT Docket No. 96-86 (June 6, 2006); Comments of Access Spectrum, LLC, Columbia Capital III, LLC, Pegasus Communications Corporation, and Telcom Ventures, LLC, WT Docket Nos. 06-150 and 01-309, CC Docket No. 94-102 (Sept. 29, 2006); Comments of Access Spectrum, LLC and Pegasus Communications

maximize the usefulness of the Upper 700 MHz for either commercial or public safety users. The proposals of Access Spectrum and Pegasus would remedy those deficiencies. Adoption of the BOP will result in an additional 3 MHz of usable broadband spectrum for the commercial allocation as well as an additional 3 MHz for the public safety allocation. Adoption of the Commercial 700 MHz Plan will increase technology options for potential operators and harmonize the commercial allocation to match the public safety broadband allocation, thus enabling the public safety community to benefit from commercial economies of scale. In addition, placing public safety and commercial broadband operations in adjacent bands will facilitate the sharing of infrastructure as well as the public safety use of commercial spectrum on a priority basis in times of crisis. Such sharing of infrastructure could provide over \$6 billion in savings to public safety agencies as they build out their broadband networks. Finally, to the extent that Verizon's concern is that the size of the 10 MHz D block not be reduced, the Commercial 700 MHz Plan includes auction rules (*i.e.*, "package bidding") that enable the aggregation of spectrum blocks as well as geographic areas. In this manner, the market can determine the optimal size of the blocks, for example, 5.5 MHz, 11 MHz or 16.5 MHz.

Given these advantages over current rules, and the substantial support for, and lack of opposition to, the proposal on the merits, we renew our call to the Commission to act with dispatch on both the Broadband Optimization Plan and the Commercial 700 MHz Plan, thus addressing Verizon's stated concerns, as well as optimizing the Upper 700 MHz band. This can be accomplished without the need for Congressional intervention, and in ample time to complete the Congressionally-mandated auction in compliance with the statutory deadlines.

Pursuant to the Commission's rules, this letter is being submitted for inclusion in the public record in the above-referenced proceeding.

Sincerely,

/s/ Michael I. Gottdenker

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